

## MAKING DECISIONS FOR AN INCAPACITATED PERSON

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When a person is mentally incapacitated because of illness, disease, or a developmental disability, others must make major decisions for the person. This task usually falls to the person's family members or friends. It can be very difficult to decide what the person would want, especially in the area of medical care. However, Maryland law encourages family members and friends to make major decisions for an incapacitated person.

This pamphlet describes some decisions others can make and the consequences of becoming a decision maker for another person.

### MEDICAL DECISIONS

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The Health Care Decisions Act allows family and friends to make medical decisions for someone who is unable to decide for him/herself. The Act recognizes that close relatives or friends have the patient's best interest at heart and, with the patient's doctor, will make the best decision for that person.

After two doctors certify that a patient is unable to make a health care decision, the doctors will ask whether the patient has named a health care agent in a Health Care Advance Directive. If an agent has been named, that person would make all subsequent decisions. If an agent has not

been appointed, the doctors will look to the closest relative or friend to make health care decisions. This person is called a **surrogate**.

Surrogates may act in the following order of priority: 1) a legally appointed guardian, 2) a spouse, 3) adult children, 4) parents, 5) adult siblings, or 6) a distant relative or friend

#### Types of Decisions

A surrogate may make all but a few medical decisions for a patient, including routine decisions about daily care, as well as decisions about end-of-life treatment. The surrogate should consult with the patient's doctors and should make decisions based on what the patient would want if the patient's wishes are known. If the patient's wishes are not known, then decisions should be based on the patient's **best interest**. It is usually not necessary for the surrogate to get court permission to make decisions; however, the surrogate cannot authorize treatment for a mental disorder or sterilization.

#### Liability

Serving as a surrogate does not make the person responsible for any of the patient's medical cost.

#### FOR MORE INFORMATION, CONTACT:

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The Maryland Department of Aging, in partnership with the Area Agencies on Aging, provides leadership and advocacy for older Marylanders and their families through information, education, programs and services which promote and enhance choice, independence and dignity.



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*This pamphlet was developed with the assistance of Joan O'Sullivan, a tireless advocate for people facing guardianship.*

# MAKING HEALTH CARE DECISIONS FOR OTHERS



*A Guide for Family Members and Friends. How to Make Health Care Decisions for Those Who Cannot Make Decisions for Themselves.*



DEPARTMENT OF AGING  
*Choice, Independence and Dignity*

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor  
Rona E. Kramer, Secretary

STANDARDS  
FOR SURROGATES

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**Substitute Judgment**

When making health care decisions for a person who cannot make health care decisions for him/herself, the surrogate should consider what health care the person would want.

The surrogate should consider the person's:

- 1) current diagnosis and prognosis;
  - 2) expressed preference regarding the treatment being considered;
  - 3) attitude toward similar treatment for another person;
  - 4) behavior and attitude toward medical treatment in general;
  - 5) expressed concerns about the effects of his/her illness and treatment on family and friends;
- and
- 6) religious and personal beliefs.

**Best Interest**

If it is not possible to know what health care decisions the incapacitated person wants, the surrogate should base his/her decisions on what is in the person's **best interest**, considering:

- 1) the effect of the health care treatment will have on the physical, emotional and mental functions of the person;
- 2) the treatment's risk, benefits, and side effects;
- 3) the effect of the treatment on the person's life expectancy and the person's potential for recovery;
- 4) the humiliation, loss of dignity, and dependency the person is suffering; and
- 5) the religious beliefs and values of the person.



NURSING HOME ADMISSIONS

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In most cases, a relative or friend may sign a person into a nursing home without being a guardian or having a power of attorney. Nursing homes have special contracts for a relative or friend who is admitting a person into a nursing home. The person signing the contract should read it carefully to be sure that it states clearly that he/she is agreeing to pay *from the patient's funds only*. The signer should be certain he/she is not agreeing to pay the patient's bill from the signer's assets, unless the signer wants to be personally obligated to pay.

A family member or friend can also apply for Medical Assistance and other benefits for a person without being a guardian or an agent.

GUARDIANSHIP

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Guardianship is a legal proceeding in which a court appoints a guardian to handle the affairs of an incapacitated person if there is no relative or friend willing to make decisions for that person or if the person is refusing care. It should be used as the last resort.

Guardianship is necessary if the incapacitated person has money or property and does not have an agent who is authorized to handle his/her property or financial affairs.

HEALTH CARE DECISION STATEMENT

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If you are the spouse, adult child, parent, sibling, or guardian of an incapacitated person, you may qualify as a surrogate decision-maker for health care without signing any papers. If you are a distant relative or friend, you should sign a health care decision statement.

Sample Health Care Decision Statement of a Relative or Friend

I, \_\_\_\_\_ certify that I am a competent adult. I have known and had regular contact with the patient for \_\_\_\_\_ years. My relationship to the patient is: \_\_\_\_\_. I am familiar with his/her activities, health and personal beliefs, as described below:

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I agree to be a surrogate health care decision-maker for:

\_\_\_\_\_  
(Name of Patient)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date